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MAY 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 14, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Safeguards to Improve the
Administration of the Interstate
Access Tariff and Revenue
Distribution Processes

CC Docket No. 93-6

MAY 14 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Safeguards to Improve the
Administration of the Interstate
Access Tariff and Revenue
Distribution Processes

CC Docket No. 93-6
RM 7736

REPLY

May 14, 1993

National Exchange Carrier
Association, Inc.
100 South Jefferson Road
Whippany, NJ 07981

SUMMARY

Comments in this proceeding address safeguards currently in

input from its member companies and their representatives prior to resolving complex FCC rule interpretation issues, and that NECA should refer such issues to the FCC when clarification is needed. On-line access to NECA's computer data bases is unnecessary and should not be required. The record shows that such access would subject NECA pool members to a level of scrutiny exceeding that applied to large ECs or any other entities regulated by the Commission.

Commenters also generally agree that NECA's incentive compensation plan comports with standard industry incentive plans and, given changes NECA has made to the Plan, that there is no need to submit it for Commission review. Finally, the Commission should not require NECA to provide reports of its cost study review activities. If the Commission does require such reports, data on individual companies should not be provided.

NECA has voluntarily incorporated into its processes suggestions for improvement from the independent auditor and from the Commission. Comments filed in this proceeding demonstrate almost unanimous support for proposals advocated by NECA. Additional measures, supported by only a few parties, are not necessary and could unfairly burden NECA pool ECs and create incentives for companies to leave the pool. NECA's proposals, as described in its comments, should be adopted.

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REPLY

The National Exchange Carrier Association, Inc. (NECA) is

~~submitting its Reply in response to comments filed on April 14~~

I. NECA'S BOARD

A. Inclusion of Outside Directors on a Permanent Basis.

All the parties that commented on the Commission's NECA Board proposals agree that the addition of outside directors on NECA's

any substantiation for why three rather than two outside directors would better serve the Commission's objectives. While NARUC has stated in the past that at least two outside directors should be added to the NECA Board, it now fully supports the "permanent

B. Board Composition and Size

Commenters in this proceeding overwhelmingly favor retaining the current NECA Board size and composition and emphasize the need for small companies to be represented adequately.¹² OPASTCO states that it is imperative that NECA represent its members and that the current number of Subset III directors is warranted because almost all participants directly in the NECA

Ameritech is the only commenter that suggests a change to the current NECA Board size and composition. It recommends that the Board be reduced from seventeen to eleven members by decreasing the Subset I and II directors from three each to two each and by reducing the number of Subset III directors from nine to five. 16

NECA requests that the Commission retain the current Board configuration in light of the support provided by the great

elections and use the selection and nomination process for outside directors that worked very effectively in 1991.²³ NECA also states that elections for outside directors will include multiple candidates periodically and in any year in which an incumbent outside director chooses not to run for re-election.²⁴ NTCA has recognized that NECA's nomination and election process for outside directors has worked well and that there is no reason for the Commission to prescribe changes.²⁵ NTCA also asserts that NECA should be allowed to retain flexibility because the pool of potential non-EC directors may be limited.²⁶

Ameritech, NTCA and GCI suggest that two-year staggered terms should be allowed for continuity.²⁷ In addition, Ameritech supports the staggered two-year term proposal for all NECA Board members.²⁸ Although NTCA states there may be benefits from two-year staggered terms, it also states that these types of decisions should be left up to NECA. NTCA maintains that there are no overriding regulatory concerns warranting Commission involvement in corporate functions to this level of detail.

NECA agrees with NTCA that it should be able to determine the

²³ NECA Comments at 15-17.

²⁴ Id. at 16.

²⁵ NTCA at 9.

²⁶ Id.

²⁷ Ameritech at 3, GCI at 2 and NTCA at 9. GCI also states that EC directors should retain one year terms.

²⁸ Ameritech at 3.

length of terms for both the outside directors and the Subset directors. As NECA stated in its Comments, the current selection, nomination and election process for directors have produced turnover that ensures both the necessary continuity and a sufficient change to allow qualified NECA members an opportunity to serve on the NECA Board.²⁹

Ameritech and GCI also suggest that the number of multiple candidates should be set at three and two respectively for each outside director position in an election. As several of the commenters have stated, these types of decisions should be left to the administration of NECA. NECA requests that the Commission keep the one-year term rule and allow NECA to assemble a reasonable slate of candidates for contested elections.³⁰

E. Term Limitations.

Ameritech has suggested that directors should be limited to one two-year term except that, if a director has been elected a Chairman or Vice Chairman, he or she shall be allowed an additional two year term.³¹ Ameritech believes that this measure would broaden membership participation on the Board.³² Bell Atlantic states that the Commission should not adopt term limitations because the NECA Board has had substantial and naturally-occurring

²⁹ NECA Comments at 16.

³⁰ See 47 C.F.R. § 69.602(f).

³¹ Ameritech at 4.

³² Id.

turnover which indicates that the current process is working.³³ NTCA and ICORE are also on record that term limitations are unnecessary and that NECA should be able to establish corporate and Board policies to accomplish the Commission's objectives without stringent rule criteria that restricts desirable flexibility.³⁴

Although it briefly mentions arguments concerning term limitations, the Commission's NPRM did not request term limitation proposals.³⁵ The Commission does, moreover, note the NECA Board turnover rate.³⁶ Since the NECA Board's turnover rate promotes continuity and resident expertise,³⁷ the Commission should not mandate term limitations for NECA Board members.

F. Voting Privileges on Committees.

Those commenters that discuss the Commission's voting privileges proposals unanimously favor outside directors serving on all Board committees and non-pooling directors serving on the Common Line and Traffic Sensitive Committees.³⁸ GCI has suggested that two outside directors serve on each of the Common Line and

³³ Bell Atlantic at 2.

³⁴ NTCA at 9 and ICORE at 6-7.

³⁵ NPRM at ¶ 18.

³⁶ Id.

³⁷ See NECA Comments at 16.

³⁸ Ameritech at 4, ICORE at 7, NTCA at 9 and SWBT at 5.

Traffic Sensitive Committees.³⁹

If the Commission adopts a rule to add outside directors to the NECA Board, NECA will change its By-laws to require that at least one outside director be a voting member of each Board Committee. NECA does not oppose having two outside directors on both the Common Line and Traffic Sensitive Committees, if the Commission so decides.

G. Formalization of Subcommittees.

As NECA stated in its Comments, it has already formalized its procedures to appoint subcommittees and require minutes and regular reports by amending its By-laws in March.⁴⁰ Ameritech cites its support for the recent amendments in its comments.⁴¹ SWBT, ICORE, and GCI also state their support for subcommittee formal minutes and reporting requirements.⁴² No further action by the Commission

³⁹ GCI at 3. GCI's suggestion that the Commission make an outside director position mandatory for every subcommittee has not been proposed by the Commission and goes beyond the scope of this proceeding. Such a requirement is unnecessary, since subcommittees keep minutes and report all of their actions to the authorizing

is required on this matter.

II. NECA'S RESPONSIBILITIES UNDER COMMISSION RULES

A. Resolving Controversial Issues

Commenting parties generally support NECA's handling of cost study issues, but express concern over possible misunderstandings of NECA's role in interpreting and enforcing Commission rules. Alltel, for example, agrees that NECA's procedures "serve to assure compliance with Commission rules and are important in detecting instances of noncompliance."⁴³ Along with a number of other commenters, Alltel disagrees with statements contained in the NPRM that appear to suggest that NECA should not seek industry input or obtain consensus on an issue.⁴⁴ These commenters generally point out the importance of obtaining input from member companies and their consultants, both to assure that NECA has access to all relevant information and to avoid needless controversy with members.⁴⁵

the purpose of these meetings is not to facilitate discussions between ECs and interexchange carriers. Rather it is an important forum for the resolution of EC issues that must be decided by the NECA Board in compliance with the Commission's Rules.

⁴³ Alltel at 3.

⁴⁴ Id. at 4.

⁴⁵ See Ameritech at 5 (without access to member expertise and historical knowledge, NECA would be required to "reinvent the wheel" when new issues arise). See also JSI at 4 (NECA practice of discussing issues with members has not compromised its "independent interpretive judgment" nor has it prevented NECA from implementing interpretations with which member companies have disagreed); NTCA at 10-15 (extensive discussion of complexity of rule

The record shows substantial support for NECA's current practice of discussing identified cost issues with member companies prior to reaching a resolution. NECA's revised administrative procedures governing Cost Issues Resolution emphasize the importance of compliance with Commission rules. By obtaining extensive input from member companies, consultants, and industry associations, NECA assures that it has the benefit of industry expertise. The process also gives potentially-affected member companies the opportunity to express their views.⁴⁶

Some commenters suggest that, in directing NECA to exercise independent judgment and to adjust nonconforming data, the Commission has improperly "delegated" its regulatory authority to NECA.⁴⁷ As administrator of the access charge pools and the Commission's Lifeline Assistance and Universal Service Fund programs, NECA is directly responsible for assuring that pool data complies with Commission rules.⁴⁸ Where non-compliance is found, NECA requests carriers to make voluntary corrections. If

interpretations and need for flexibility in developing interpretations); SWBT at 6-7 (failure to consult with members would deprive NECA of significant expertise necessary to ensure proper application of the rules).

⁴⁶ NECA agrees with NTCA that issues should be discussed on an informal basis with the Commission staff, and that formal procedures for this "early warning system" should not be created. See NTCA at 15. NECA also agrees with NTCA and SWBT that the process of rule interpretation can be complex, and that the Commission should not require NECA to bring issues to the Commission's attention without first obtaining input from member companies. See id. at 17, SWBT at 7.

⁴⁷ See, e.g., Alltel at 5, Bell Atlantic at 3, SWBT at 6.

⁴⁸ See Bell Atlantic at 3 n.11.

corrections are not made voluntarily, NECA must make overriding adjustments to assure pool integrity. Where the rules are unclear or appear to be in conflict, NECA does not seek to make its own regulatory judgments but instead looks to the Commission for clarification.⁴⁹

The record in this proceeding shows that NECA's Cost Study Validation Process, including its methods for resolving cost issues, strikes a reasonable balance between the need to involve affected members of the industry in analyzing FCC rule interpretation issues, and the need for NECA to exercise independent judgment in administering the access charge pools.

B. On-Line Access to Computer Data Bases.

A number of Commenters express strong opposition to the Commission's proposal to require NECA to provide the Commission with on-line access to its computer data bases.⁵⁰ As Alltel, Bell Atlantic, NTCA, SWBT and USTA and other commenters emphasize,

⁴⁹ In some cases NECA member companies may seek a ruling from the Commission on questions of rule interpretation. NECA monitors all such proceedings, and participates where it has relevant information to contribute. With respect to such petitions, CHA states a concern that the timing of such orders may prevent ECs from making retroactive adjustments to pooling data for periods prior to the closing of the 24-month "window" limitation contained in NECA's contract with its members. CHA at 2-5. NECA's Agreement for the Distribution of Interstate Access Revenues is explicitly subject to Commission orders. Where a Commission order specifies that retroactive adjustments are to be made over a given period, the order supersedes NECA's 24-month time limitation on settlement adjustments.

⁵⁰ NPRM at ¶ 32.

access to NECA's internal computer files would represent an extraordinary step for the Commission, and would subject NECA pool members to a level of scrutiny that far exceeds that applied to the Bell Companies or any other entities regulated by the Commission.⁵¹

These comments reinforce NECA's position that on-line access to NECA's computer data bases is unwarranted. As NECA pointed out in its Comments, on-line access to the data in NECA's computer files would not be useful to the Commission in reviewing NECA's filings, since most of the data is preliminary or estimated.⁵² Since non-pooling ECs are not required to provide similar access to their computer data bases, a requirement that NECA provide such extraordinary access would create incentives for ECs to leave the pools.

Bell Atlantic correctly points out that the Commission retains the ability to obtain relevant information from NECA and other carriers without intrusive electronic monitoring of internal data bases.⁵³ Where the Commission has determined a need for particular information in electronically accessible form, it has required affected carriers to file the information on diskette. In fact, NECA already provides USF, network usage, and tariff cost and demand data in this format, and has responded quickly to specific Commission data requests for additional electronic or written

⁵¹ See Alltel at 6, Bell Atlantic at 3, NTCA at 19, SWBT at 8, USTA at 4 and VTA at 1.

⁵² See Alltel at 6, and Bell Atlantic at 3 n.13.

⁵³ Bell Atlantic at 3.

information. Under these circumstances it is not clear that on-line access to data would materially assist the Commission in reviewing NECA filings.⁵⁴

In marked contrast to the views of most commenters, AT&T argues that the Commission's proposal "does not go far enough." According to AT&T, the Commission should require NECA to provide on-line access to IXC access customers to assist them in reviewing

pools.⁵⁷

AT&T's proposals for submission of additional USF and tariff data go far beyond the scope of the Commission's proposals in this proceeding, are unrelated to the "safeguards" proposals suggested by the independent auditors, and in any event would not be helpful in evaluating NECA tariff filings. For example, cost study companies comprise only about half of the study areas participating in the NECA pools. The remainder (average schedule companies) do not maintain the type of data that AT&T seeks. Moreover, many of the cost study companies do not have the resources or skills required to develop comprehensive cost and demand forecasts. Since 1988, in fact, NECA has been required to develop this information on an aggregate level.⁵⁸ Thus, the individual company data sought by AT&T represents only a part of the calculations underlying NECA's filed rates. By ignoring overall analyses performed by NECA in its rate computations, in favor of a "pick and choose" approach to individual data points, parties can significantly distort the record in a proceeding.

If AT&T believes that data filed in support of NECA tariffs do not support a filed rate, it has ample opportunity to seek suspension and investigation of filed rates.⁵⁹ The Commission has already determined that Tier 2 companies should not be required to

⁵⁷ AT&T at 4-5. See also Ameritech at 5.

⁵⁸ See Annual 1988 Access Tariff Filings, Memorandum Opinion and Order, 3 FCC Rcd 1281, 1305 (1987).

⁵⁹ See 47 C.F.R. § 1.773.

provide ARMIS-type data.⁶⁰ As NECA and other commenters pointed out, it would be unfair to require NECA pool members to provide these data without imposing similar requirements on non-pooling companies. In any event, the Commission should not re-write its rules regarding cost support data for tariff filings in this proceeding.

III. STRENGTHENING NECA'S INTERNAL PROCEDURES

A. Certification of Cost Study Data

The NPRM proposes that NECA obtain certifications of data submitted by ECs as a way of providing additional assurance that the data conform to Commission rules.⁶¹ NECA responded to this proposal by stating that it would require certification of final cost study data beginning with 1992 studies.⁶²

Commenters addressing this issue appear to agree that certification would be helpful. GCI, for example, states that EC officers and employees should be required to certify that submissions comply with the Commissions' rules.⁶³ Similarly, SWBT supports having responsible EC officers or employees certify that

⁶⁰ See generally, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), Report and Order, 2 FCC Rcd 5770 (1987).

⁶¹ NPRM at ¶ 37.

⁶² NECA Comments at 27-28.

⁶³ GCI at 5.

data submitted to NECA complies with Commission rules.⁶⁴ In contrast, JSI asserts that additional certifications are unnecessary because NECA already requires certification of overall company financial data.⁶⁵ Similarly, VTA objects to additional certifications as unnecessary, and expresses particular concern with a requirement to certify estimated data.⁶⁶

By offering to obtain certifications of final cost studies, NECA seeks to balance administrative burdens on ECs with the need to assure that cost study data comply with Commission rules. NECA believes that obtaining written certifications of final cost study data will highlight and affirm the importance of rule compliance, without imposing significant administrative burdens on ECs. Certifications will be signed by an officer of the exchange carrier (or, in the case of telephone cooperatives, the General Manager).

B. Incentive Compensation

Five commenters addressed the Commission's proposals on NECA's incentive compensation plan (Plan).⁶⁷ Bell Atlantic and SWBT agree with NECA's Comments that NECA's Plan comports with standard

⁶⁴ SWBT at 8. ICORE also appears to support certification in some form, but raises concerns that extensive certification requirements may impose unwarranted burdens on ECs. ICORE at 11.

⁶⁵ JSI at 5-6.

⁶⁶ VTA at 1-2.

⁶⁷ None of the commenters in this proceeding supported the Commission's tentative proposal to preclude payments based on the rate of return earned by the CL and TS pools under NECA's Plan pending a review of that Plan.

industry incentive plans and objectives and that there is no need to submit it for Commission review.⁶⁸ VTA states that NECA's Plan should not be submitted to the Commission because responsibility for complex issues involving compensation should and does reside with NECA's Compensation Committee and Board.⁶⁹

GCI states that NECA's Plan should be submitted but does not provide any substantiation.⁷⁰ ICORE also calls for submission of NECA's Plan to the Commission. ICORE focuses on officer compensation, however, which is a matter that is properly handled by the Board and is not a subject of the Commission's NPRM proposals.⁷¹

ICORE states that incentive compensation pay out that is based on the achieved rate of return may create undesired results.⁷² ICORE's comments do not reflect recent enhancements to NECA's plan which include a shift in weighting for earnings in favor of measures that emphasize rule compliance in pool reporting and

⁶⁸ See Bell Atlantic at 4 and SWBT at 9.

⁶⁹ VTA at 2.

⁷⁰ GCI at 5.

⁷¹ ICORE at 12. ICORE also goes beyond the scope of the proceeding by discussing activities of NECA's subsidiary, Independent NECA Services, Inc. As a result of the Commission's Order on NECA's Request for Authority to Provide Intrastate Services to Exchange Carrier Members, 2 FCC Rcd 6853 (1987), NECA has on file a Cost Manual that has been approved by the Commission. This Cost Manual apportions total company costs between NECA and INS.

⁷² Id.

service.⁷³ Bell Atlantic acknowledges changes to the Plan in the direction recommended by the independent auditor. Under NECA's incentive compensation plan, as described by Bell Atlantic, no rewards are available for exceeding the authorized rate of return and the focus is on development of accurate forecasts in tariff filings.⁷⁴ SWBT also recognizes that NECA has already made revisions to its compensation plan to reduce the compensation affected by earnings performance.⁷⁵

As NECA explained in its Comments, the current incentive compensation plan addresses the concerns raised in the Safeguards Report.⁷⁶ NECA's goals of compliance with the Commission's rules and service to its members are featured prominently throughout NECA's Plan, including the earnings component. The Safeguards Report did not recommend the elimination of the earnings component.⁷⁷ In line with the Safeguards Report recommendations, the weight of the earnings component has been substantially reduced and it has a clear emphasis on rules compliance.⁷⁸ NECA has taken a number of steps since the independent auditor's review of its

⁷³ NECA Comments at 31.

⁷⁴ Bell Atlantic at 4.

⁷⁵ SWBT at 9.

⁷⁶ NECA Comments at 28-32. See also Review and Recommended Pool Safeguards, AAD 91-24 (filed December 9, 1991) (Safeguards Report).

⁷⁷ See NECA Comments at 30 for review of Safeguards Report discussion.

⁷⁸ Id. at 32.